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JONES DAY
222 EAST 41ST STREET
NEW YORK NY 10017-6702

In re Application of :
AEBI et al. :
Application No.: 10/539,659 : DECISION
PCT No.: PCT/CH2002/000704 :
Int. Filing Date: 17 December 2002 :
Priority Date: None :
Attorney Docket No.: LUS-16089 :
For: INTERVERTEBRAL IMPLANT WITH :
JOINT PARTS MOUNTED ON ROLLER BODIES :

This is a decision on applicants' renewed petition under 37 CFR 1.47(a) filed 17 January 2007 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 17 December 2002, applicants filed international application PCT/CH2002/000704, which designated the United States and did not claim a priority date. A copy of the international application was communicated from the International Bureau to the USPTO on 01 July 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 17 June 2005.

On 14 June 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, an English translation of the international application, and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage.

On 14 February 2006, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 14 September 2006, applicants filed a petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a petition/fee for a five month extension of time, a declaration of inventors, a declaration of facts by Carrie A. McPherson, a declaration of facts by Garry J. Tuma,

a copy of an e-mail dated 22 August 2006 from Carrie McPherson to non-signing inventor Max Aebi, a copy of a "Delivery Status Notification" for the e-mail; a copy of a letter dated 10 August 2005 from a "P. Kaiser" to a "Mr. Spaw", and a copy of a letter dated 16 August 2005 to Mr. Spaw from a person whose signature is not legible to the undersigned.

On 17 October 2006, a decision was mailed dismissing applicants' petition under 37 CFR 1.47(a) without prejudice. Specifically, it was noted that factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort.

On 17 January 2007, applicants filed the instant renewed petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a petition/fee for a one-month extension of time and a declaration of inventors signed by previously non-signing joint inventor Max Aebi.

DISCUSSION

Since a 37 CFR 1.497 declaration has been executed by all the joint inventors, the petition for status under 37 CFR 1.47(a) is moot. The application need not be returned to the Office of PCT Legal Affairs for any further consideration of the status under 37 CFR 1.47 and no such status should be indicated on this application file.

The declarations of inventors filed 14 September 2006 and 17 January 2007 are in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** as **MOOT**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.



Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (571) 272-3301
Facsimile: (571) 273-0459